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No. 88-912

In the

Supreme Court of the United States

OCTOBER TERM, 1988

VANESSA REDGRAVE,
PETITIONER,

v.

BOSTON SYMPHONY ORCHESTRA, INC.,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

Brief in Opposition to Petition for Writ of Certiorari

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27pp

COUNTERSTATEMENT OF QUESTION PRESENTED

Whether the First Circuit Court of Appeals, sitting in diversity, properly relied on two state statutory grounds and a state constitutional ground in affirming judgment against petitioner's civil claim under a Massachusetts statute, Mass. Gen. L. ch. 12, §§ 11H - 11I (1986).

RULE 28.1 LISTING

Respondent Boston Symphony Orchestra, Inc. has no parent companies, subsidiaries, or affiliates to list pursuant to Sup. Ct. R. 28.1.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

Brief In Opposition To Petition For Writ Of Certiorari

The respondent, Boston Symphony Orchestra, Inc. (BSO), respectfully requests that this Court deny the petition for writ of certiorari seeking review of the First Circuit Court of Appeals' opinion in this case. In that opinion, reported at 855 F.2d 888 (1st Cir. 1988) (*en banc*) (Coffin, J.) and set forth at pages 1a-67a of petitioner's appendix, the Court of Appeals held, "in light of [its] understanding of state law, that the

district court correctly entered judgment for the BSO" on the state statutory claim petitioner seeks to pursue before this Court. *Id.* at 912, Pet. A. 43a.[1]

COUNTERSTATEMENT OF THE CASE

Petitioner Redgrave, an actress, sued the BSO for cancelling a series of concerts that she had been hired to narrate in Boston and New York. Soon after petitioner's engagement the BSO began receiving dozens of angry and abusive calls protesting petitioner's support of the Palestine Liberation Organization. One caller stated that there would be "bloodshed and violence" at Boston's Symphony Hall if Redgrave appeared. C.A. App. 1386a, 1600a. Other callers threatened "trouble," and some stated that Redgrave's engagement would "haunt" the Symphony, that she "should perish," and that the Symphony would "mourn." C.A. App. 1383a-1390a, 1674a. The people receiving these calls were "scared" and "shaken." C.A. App. 1599a-1601a, 1659a, 1673a.

BSO decision makers consulted with police authorities and other people knowledgeable about the threatened disruptions. They were told that Redgrave's appearance at New York's Carnegie Hall might cause a riot, C.A. App. 593a-596a, that security measures at Carnegie Hall had not prevented disruptions in the past, C.A. App. 611a-613a, and that no amount of security precautions could prevent the acts expected to disrupt the concerts at Boston's Symphony Hall. C.A. App. 1739a-1747a. Redgrave's own agent cautioned her that "some-

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[1] References to "Pet. A __" are to the appendix to the petition for certiorari. References to "C.A. App. __" are to the joint appendix filed with the Court of Appeals.

thing might happen to her." C.A. App. 1874a. The BSO decided to cancel the concert series and offered all the guest artists, including petitioner, their full performance fees. C.A. App. 1515a-1517a.

Petitioner refused her fee and sued in federal court under several state and federal theories, most of which were dismissed as meritless before trial. C.A. App. 2a. Remaining for trial were two state law claims, with jurisdiction resting on diversity of citizenship. 28 U.S.C. § 1332(a) (1982). Petitioner and another[2] sued for breach of contract, and petitioner alone sued under a state statute known as the Massachusetts Civil Rights Act (MCRA), Mass. Gen. L. ch. 12, §§ 11H - 11I (1986).

Redgrave's MCRA claim — the subject of this petition — was that the BSO was liable under the Massachusetts statute for allegedly interfering, "by threats, intimidation or coercion," with her exercise of free speech rights. The MCRA creates a private cause of action for "[a]ny person whose exercise or enjoyment of rights secured by the constitution or laws of the United States, or of rights secured by the constitution or laws of the commonwealth, has been interfered with . . . ." Mass. Gen. L. ch. 12, § 11I. A person may be liable for interference "by threats, intimidation or coercion" with such rights, "whether or not acting under color of law." *Id.* § 11H. The state statute thus "extend[s] beyond the limits of its Federal counterpart," 42 U.S.C. § 1983, "by incorporating private action within its bounds." *Batchelder* v. *Allied Stores Corp.*, 393 Mass. 819, 822, 473 N.E.2d 1128, 1131 (1985).

The district court (Keeton, J.) and a jury sitting in an advisory capacity both concluded that the BSO did not cancel the concerts because of any disagreement with petitioner's political views. Rather, the district court specifically found that the BSO decision makers cancelled the concerts because they were

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[2] Vanessa Redgrave Enterprises, Ltd.

concerned about potential disruptions that could jeopardize the artistic integrity of the performance and the physical safety of the performers and audience. Pet. A. 182a.[3] The district court concluded that the BSO could not in such circumstances be held liable under the MCRA, and accordingly entered judgment for the BSO.

Petitioner appealed, arguing that the district court should have read the MCRA to impose liability on the BSO, even though it cancelled the concerts for reasons of physical safety and artistic integrity, because the cancellations ultimately resulted from protests over petitioner's political views. The First Circuit heard argument, and then on its own motion certified two questions on the MCRA to the Massachusetts Supreme Judicial Court (SJC). Pet. A. 93a-94a.[4]

The Supreme Judicial Court answered the specific questions certified, and also provided explicit advice on "serious issues which are not addressed in the questions but which are suggested by the record of the case." *Redgrave* v. *Boston Symphony Orchestra, Inc.*, 399 Mass. 93, 97, 502 N.E.2d 1375, 1377 (1987), Pet. A. 112a (plurality opinion). After hearing argument from the parties and considering numerous *amicus* submissions,[5] the SJC pointed out state law limits to the MCRA resulting from this case's unusual fact situation:

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[3] Petitioner has never challenged the sufficiency of the evidence supporting these findings, notwithstanding her efforts to recast the trial record before this Court. Petition at 5-9.

[4] First, the Court of Appeals asked whether a defendant could be held liable under the MCRA "if the defendant had no personal desire to interfere with the rights of that person but acquiesced to pressure from third parties." Pet. A. 93a. Second, the Court of Appeals asked if it would be a defense under the MCRA "for the defendant to show that its actions were independently motivated by additional concerns," such as economic loss or physical safety. Pet. A. 94a.

[5] The Attorney General of Massachusetts, the American Jewish Congress, the Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association and the Civil Liberties Union of Massachusetts submitted *amicus* briefs to the SJC.

the BSO was *itself* engaged in speech protected by the MCRA, and "was itself a victim of violations of [the MCRA] by those persons who put pressure on the BSO to cancel" its own concert series. *Id.*

The SJC justices, while writing three separate opinions on the narrow questions certified, all agreed that the atypical nature of this case could protect the BSO from MCRA liability. The justices forming the plurality on the certified questions acknowledged that, as a matter of statutory construction, "it can be argued . . . that it was not within the legislative intent" to punish a defendant under the MCRA simply for deciding "not to speak (i.e., perform)." 399 Mass. at 97, 502 N.E.2d at 1377, Pet. A. 112a-113a. The dissent similarly doubted that "[m]ere cancellation of the performances" could subject the BSO to liability under the statute. *Id.* at 110, 502 N.E.2d at 1385, Pet. A. 126a. The concurrence added that it was "unable to think of any theory under which . . . statutory liability may properly be imposed on the BSO in the face of its State constitutional right to determine what artistic performances it will or will not perform." *Id.* at 102, 502 N.E.2d at 1380, Pet. A. 118a. Having thus explicated the MCRA's reach in this *atypical* case, the SJC answered the certified questions "as they [were] worded," namely "as addressed to a *typical* [MCRA] action" that did *not* involve a defendant itself engaged in speech. *Id.* at 97, 502 N.E.2d at 1377, Pet. A. 113a (emphasis added).[6]

A divided panel of the First Circuit held in favor of petitioner. Pet. A. 72a-108a. The First Circuit *en banc* vacated that decision, and affirmed the district court's judgment on the MCRA claim, based on the SJC's opinions as to the reach of that state statute. Petitioner then moved without success to certify additional state law questions to the SJC. Pet. A. 70a-71a.

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[6] The "typical" MCRA action seeks to redress racial violence by private parties. It was "'serious problem[s] of racial harassment'" that prompted passage of the Act. *Batchelder*, 393 Mass. at 821, 473 N.E.2d at 1130 (citation omitted).

REASONS FOR DENYING THE WRIT

The Supreme Court should not grant certiorari to reconsider the First Circuit's reading of Massachusetts law, a reading even petitioner has called "reasonable." Petitioner would have this Court reverse the Court of Appeals on each of three state law grounds for decision, in order to decide a federal constitutional defense that the First Circuit *en banc* did not reach. Petitioner has not explained why this Court, contrary to its usual practice, should grant certiorari to venture opinions on state statutory and state constitutional issues that Massachusetts courts could repudiate tomorrow. Moreover, petitioner asks this Court to reach the undecided federal constitutional issue without any showing that it has arisen before or since in Massachusetts. Nor has petitioner shown that this federal issue could possibly arise under the statutes of any other state. Supreme Court review of such a case is inappropriate.

I. PETITIONER PRESENTS NO SUBSTANTIAL FEDERAL QUESTION

A. The Holding Below Rested On Three State Law Grounds.

Petitioner seeks to manufacture for review a federal "holding" that does not exist. Petitioner asks this Court to review "[t]he 'holding' below, that there is an 'artistic integrity' constitutional defense to MCRA liability." Petition at 27. The Court of Appeals, however, "*decline[d] to reach the federal constitutional issues.*" 855 F.2d at 911, Pet. A. 43a (emphasis added). Instead, the Court of Appeals held for the BSO based on *state law*: "we hold, in light of our understanding of *state law*, that the district court correctly entered judgment for the

BSO on Redgrave's MCRA claim." *Id.* at 912, Pet. A. 43a (emphasis added). This holding rested explicitly on two state statutory grounds and on the state constitution.

Petitioner simply disregards the First Circuit's conclusion that the state statute on which her claim rests "does not in the first instance impose liability for refusing to perform." 855 F.2d at 909, Pet. A. 38a. First, the Court of Appeals noted the SJC plurality's suggestion of the observation that " 'it was *not within the legislative intent* that anyone should be punished under [the MCRA] for exercising the constitutional right not to speak (i.e., perform).' " *Id.* at 907, Pet. A. 34a (quoting 399 Mass. at 97, 502 N.E.2d at 1377) (emphasis added). The Court of Appeals noted that the SJC dissent raised much the same point, indicating that the BSO would not be liable under the MCRA if it "intended 'only to exercise its constitutional right not to present an inartistic performance.' " *Id.* at 909, Pet. A. 38a (quoting 399 Mass. at 103, 502 N.E.2d at 1381). "We have no reason to think," the First Circuit concluded, "that the Massachusetts Legislature enacted the MCRA in an attempt to have its courts, at the insistence of private plaintiffs, oversee the editorial judgments of newspapers, the speech-related activities of private universities, or the aesthetic judgments of artists." *Id.* at 906, Pet. A. 33a. Petitioner offers no reason why this Court should think otherwise.

The Court of Appeals also relied on a second state statutory ground for its decision. The Court found no indication that any SJC justice would dispute Justice O'Connor's observation, made as an aside to his dissent on the certified questions, that the " '[m]ere cancellation' " of concerts " 'would not appear to convey the message that the BSO intended to take any future action' " against petitioner. 855 F.2d at 908, Pet. A. 37a (quoting 399 Mass. at 110, 502 N.E.2d at 1385). The First Circuit, like Justice O'Connor, therefore could not find the interference

" 'by threats, intimidation or coercion' " with petitioner's rights required for MCRA liability. *Id.* The First Circuit concluded that the SJC would follow this reasoning and "interpret the statute so as to find that cancellation of a performance could not be the basis for MCRA liability." 855 F.2d at 909, Pet. A. 39a.

The Court of Appeals was "equally confident that a majority, if not all, of the [SJC] justices, would agree with the concurrence that a *state constitutional defense also bars liability*." 855 F.2d at 910, Pet. A. 40a (emphasis added). As the Court of Appeals observed, the SJC's plurality opinion acknowledged constitutional doubts, and the concurrence addressed explicitly the BSO's "constitutional right to free speech under art. 16 of the Massachusetts Declaration of Rights." 399 Mass. at 102, 502 N.E.2d at 1380, Pet. A. 117a (Wilkins, J., concurring). The concurrence stated it was "unable to think of any theory under which . . . statutory liability may properly be imposed on the BSO in the face of its *State* constitutional right to determine what artistic performances it will or will not perform." *Id.*, Pet. A. 118a (emphasis added). The First Circuit, having thus found that petitioner had no state law claim to begin with, concluded it was "unnecessary and improper" to reach the BSO's federal constitutional defense. 855 F.2d at 909, Pet. A. 38a.

B. The Court Below Properly Considered State Court Responses to Certified Questions in Construing State Law.

Petitioner fails to convert the First Circuit's reading of state law into anything more than a garden-variety diversity decision by suggesting that the Court of Appeals "violated" *Michigan* v. *Long*, 463 U.S. 1032 (1983). This Court formulated the *Long* doctrine — requiring a "plain statement" of a state law

basis for decision to preclude review of a federal question — for direct review of state court decisions. Petitioner can cite no decision that reads *Long* to require federal courts interpreting state law sources in diversity to pass over possible state grounds for decision. Nor is there any reason it should.

The doctrine that governs federal court interpretation of state law is the *Erie*[7] doctrine, not the *Long* doctrine. The *Erie* line of cases, which petitioner tellingly ignores, long ago established that federal courts have the power — indeed, the *duty* — "in every case to ascertain from *all* the available data what the state law is . . . ." *West* v. *American Telephone and Telegraph Co.*, 311 U.S. 223, 237 (1940) (emphasis added). *All* the available data includes the SJC's "mere dicta," on which, petitioner complains, the Court of Appeals relied. Petition at 21. *Cf. Nolan* v. *Transocean Air Lines*, 365 U.S. 293, 295-96 (1961) (per curiam) (remanding for consideration of state supreme court opinion's "considered dictum" on issue). The contrary rule petitioner suggests would require a federal court to ignore advice on state law sought from — and given by — the state's highest court.

Here the First Circuit considered "all the available data," as required by the *Erie* doctrine, and indeed went further. On its own motion it certified questions of state law to the SJC and then carefully considered the responses. That the First Circuit could in its "sound discretion" certify certain issues to the state court, *Lehman Bros.* v. *Schein*, 416 U.S. 386, 390-91 (1974), does not give petitioner the right to insist that the federal court must then somehow extract from the state court definitive answers to every applicable state law question.[8]

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[7] *Erie Railroad Co.* v. *Tompkins*, 304 U.S. 64 (1938).

[8] Petitioner complains that the First Circuit went beyond the "yes" or "no" answers to the certified questions and considered all the comments that the SJC offered, both on the state constitution and on the scope of the MCRA. *E.g.*, Petition at 22 n.18. But that was exactly what the SJC intended. The SJC

Petitioner, after all, was the party who chose to bring her state law claims in federal rather than state court. *Cf. Colonial Park Country Club* v. *Joan of Arc*, 746 F.2d 1425, 1429 (10th Cir. 1984) (appellant "chose to file its case in federal court, and hence is in a somewhat awkward position to now claim that the federal judge misunderstood [state] law").

The *Long* doctrine, which petitioner seeks to apply here, rests on the fact that in cases of direct review state courts have entire cases squarely before them. In such cases the state courts can protect and develop state jurisprudence merely by stating plainly whether they are deciding state or federal law. *Long*, 463 U.S. at 1041. In diversity cases, on the other hand, state courts do not have the cases before them; rather, federal courts are predicting what the state courts *would* do. This is by definition a less exact exercise: "As long as there is diversity jurisdiction, 'estimates' are necessarily often all that federal courts can make in ascertaining what the state court would rule to be its law." *Bernhardt* v. *Polygraphic Co. of America, Inc.*, 350 U.S. 198, 209 (1956) (Frankfurter, J., concurring).

Petitioner argues in essence that the Court of Appeals must proceed to respondent's federal constitutional defense unless there is a state court decision directly on point against her on a state issue. *See* Petition at 17-24. This proposition collides with the *Erie* doctrine. Surely a federal court does not err by construing a state statute simply because there is no state court decision on point.[9] Otherwise a federal court would not be

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views certification as a "cooperative decision making process" in which, "even if not asked, [it] might volunteer unsolicited comments on State law which could be largely dispositive of the matter before the . . . Court." *Baird* v. *Attorney General*, 371 Mass. 741, 765, 360 N.E.2d 288, 302 (1977).

[9] *Cf. MacGregor* v. *State Mutual Life Assurance Co.*, 315 U.S. 280, 281 (1942) (per curiam) (affirmance of lower federal court's reading of state law

acting as "'only another court of the State,'" *Angel* v. *Bullington*, 330 U.S. 183, 187 (1947) (citation omitted), but would be playing by different rules.

Petitioner's argument for passing over possible state law grounds also conflicts with the Court's "settled policy [of] avoid[ing] unnecessary decisions of constitutional issues." *Mills* v. *Rogers*, 457 U.S. 291, 305 (1982). Thus in *City of Mesquite* v. *Aladdin's Castle, Inc.*, 455 U.S. 283 (1982), this Court remanded specifically so that the Court of Appeals could decide whether the state constitution disposed of the controversy in order to avoid the federal constitutional issue. 455 U.S. at 293-95. The Court's concern in that case — "that we may be unnecessarily reaching out to decide a novel constitutional question," *id.* at 295 — is equally applicable here.

The SJC's opinion serves in any event to satisfy the general interpretive principles set forth in *Long*. *Long* requires a clear statement of an independent and adequate state ground where "a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law." *Long*, 463 U.S.at 1040. Here the SJC's opinion addressed state statutory grounds that could hardly be confused with the federal constitution. Reliance on the state constitution was also explicit. The SJC concurrence refers by name to Article 16 of the Massachusetts Declaration of Rights. 399 Mass. at 102, 502 N.E.2d at 1380, Pet. A. 117a (Wilkins, J., concurring). Indeed, the SJC was necessarily discussing the state constitution, since in answering certified questions it has explicitly limited its role "to answering certified 'questions of [the] law of this State.'" *Cabot Corp.* v. *Baddour*, 394 Mass. 720, 721, 477 N.E.2d 399, 400 (1985) (SJC declined to consider question of federal

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where no decision construing the relevant state law "has been brought to our attention").

law, quoting S.J.C. Rule 1:03 on certification).[10] As even the dissent below conceded, "had this exact case arisen in the Massachusetts state courts and proceeded in its present form to the SJC, the BSO would not have been subjected to liability" under state law. 855 F.2d at 914, Pet. A. 47a (Bownes, J., dissenting).

C. Even The Federal Issue Not Reached Below Would Be Inappropriate For Review.

Petitioner could pose no federal constitutional issue worthy of further review even if she could persuade this Court to second-guess the First Circuit's reading of state law. Petitioner would have this Court decide whether the First Amendment furnishes the BSO with a defense to petitioner's MCRA claim. This issue was not reached below, and it is inappropriate for the issue to be decided for the first time by this Court.

Petitioner also makes no showing that the issue could ever arise again. She cites no other case in which the same issue has arisen, nor has she pointed to any other state statute that even arguably could pose the same constitutional issue. To the contrary, petitioner herself speaks of the MCRA's "peculiar genius," Petition at 4, peculiar in that it allows a "free speech"

[10] Petitioner is wrong to suggest that the SJC simply interprets Article 16 as coextensive with the federal constitutions's First Amendment. *E.g.*, Petition at 13 n.9. To the contrary, the state constitution provides a ground for decision independent from the federal constitution. On similar facts the SJC has "reached different results under the State Constitution from those that were reached by the Supreme Court . . . under the Federal Constitution." *Commonwealth* v. *Upton*, 394 Mass. 363, 372, 476 N.E.2d 548, 555 (1985). The First Circuit correctly recognized that one area where the Massachusetts constitution sometimes has broader application is freedom of speech. 855 F.2d at 910-11, Pet. A. 41a (citing cases). One marked distinction relevant to this case is that Article 16 — "[t]he right of free speech shall not be abridged" — is not limited to protection against state action. *Compare Batchelder* v. *Allied Stores Int'l, Inc.*, 388 Mass. 83, 445 N.E.2d 590 (1983) (suggesting that Article 16, unlike the First Amendment, would protect free speech at private shopping mall) *with PruneYard Shopping Center* v. *Robins*, 447 U.S. 74 (1980) (First Amendment provides no such protection).

claim without any requirement of state action. Mass. Gen. L. ch. 12, § 11H. Similarly, the court below acknowledged that "there are not any federal cases directly, or even closely, on point in such a *strange fact situation* and with such an *unusual state statute*." 855 F.2d at 911, Pet. A. 42a (emphasis added). Nothing suggests that this is now an issue of nationwide impact, and everything suggests that by deciding the First Amendment issue the Court might risk giving an entirely advisory opinion. In short, "[n]o reason for hasty decision of the constitutional question presented by this case has been advanced." *City of Mesquite*, 455 U.S. at 294.[11]

II. THIS COURT SHOULD NOT GRANT CERTIORARI TO REVIEW THE FIRST CIRCUIT'S READING OF MASSACHUSETTS LAW

This Court should not exercise its certiorari power to review a decision based on state law. The First Circuit held that petitioner's MCRA claim failed on three distinct state law grounds. The Supreme Court should adhere to its general practice of deferring to such readings of state law, both to conserve its own resources and because the lower federal courts are better situated to interpret the local law of their respective circuits.

"[S]tanding alone, a challenge to state-law determinations by the Court of Appeals will rarely constitute an appropriate subject of this Court's review." *Haring* v. *Prosise*, 462 U.S. 306, 314 n.8 (1983). This Court no longer even lists alleged

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[11] Petitioner tags on to her petition the argument that the court below violated "her basic due process right" because it supposedly did not "apply the applicable law to the facts" after construing the SJC's answers to the certified questions. Petition at 24. Petitioner cites not a single case to explain what this "due process" claim is about. In any event, the First Circuit carefully considered the factual findings below in reaching its decision. *See, e.g.*, 855 F.2d at 901-02, Pet. A. 24a (section of opinion entitled "The Findings Below").

misreadings of state law by Courts of Appeals as a consideration governing review on certiorari. *Compare* Sup. Ct. R. 17 *with* former Sup. Ct. R. 19(1)(b), 398 U.S. 1011, 1030-31 (1970).

Even in cases otherwise presenting an issue worthy of review, the Court has deferred to lower federal court interpretations of state law. Such determinations will not be set aside "except on a plain showing of error," *Palmer* v. *Hoffman*, 318 U.S. 109, 118 (1943), where the Court of Appeals is "clearly wrong," *The Tungus* v. *Skovgaard*, 358 U.S. 588, 596 (1959), and its conclusion is "unreasonable." *Propper* v. *Clark*, 337 U.S. 472, 486-87 (1949). Here *petitioner herself* conceded below that the First Circuit's reading of state law was "*bona fide* and reasonable," based on judgments "upon which reasonable persons may differ" regarding the meaning of the SJC's opinion on the MCRA. *See* Motion of Plaintiffs-Appellants For Rehearing and For [A Second] Certification of Issues to the Massachusetts Supreme Judicial Court at 2, 3. There is thus no call for further review by this Court.

Moreover, the Court may properly defer to the First Circuit as the tribunal more experienced in interpreting both the MCRA and Massachusetts law in general. This Court has often recognized that the courts of appeals, which "deal regularly with questions of state law" in their respective circuits, "are in a better position than we to determine how local courts would dispose of comparable issues." *Butner* v. *United States*, 440 U.S. 48, 58 (1979). The Court is therefore rightly "hesitant to overrule decisions by federal courts skilled in the law of particular states." *Propper*, 337 U.S. at 486.

Here the state law at issue — Massachusetts law — is by definition within the First Circuit's ken. Moreover, the First Circuit has dealt repeatedly with the MCRA.[12] The First Cir-

[12] *See, e.g., Jackson* v. *Liquid Carbonic Corp.*, No. 87-2073, slip op. (1st Cir. Dec. 1, 1988) [available at 1988 U.S. App. LEXIS 16115]; *Domegan* v.

cuit's familiarity with the state law at issue thus confirms the wisdom of deferring to its reading of state law. There is no reason why this Court should venture interpretations of Massachusetts law in a case that presents no other issues.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

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Fair, 859 F.2d 1059 (1st Cir. 1988); *Conway* v. *Electro Switch Corp.*, 825 F.2d 593 (1st Cir. 1987); *Elwood* v. *Pina*, 815 F.2d 173 (1st Cir. 1987); *Grubba* v. *Bay State Abrasives, Div. of Dresser Indus., Inc.*, 803 F.2d 746 (1st Cir. 1986); *Doty* v. *Sewall*, 784 F.2d 1 (1st Cir. 1986); *Davis* v. *Sears, Roebuck and Co.*, 708 F.2d 862 (1st Cir. 1983); *Sutter* v. *Pitts*, 639 F.2d 842 (1st Cir. 1981). Indeed, to respondent's knowledge the First Circuit is the only Court of Appeals that has dealt with the MCRA at all.